

SCOTTISH REGISTER OF TARTANS ACT 2008

EXPLANATORY NOTES

SUMMARY OF AND BACKGROUND TO THE ACT

Section 6: the Application

14. This section sets out the process for applying for registration of a tartan in the Register. Subsection (1) clarifies that anyone can apply to register a tartan. Subsection (3) applies only where a person can authorise the Keeper to register a tartan. This would be the case if he had intellectual property rights in the tartan or any material accompanying the application. The subsection requires the applicant to authorise registration and to certify that he has the right to provide such an authorisation. In the event that there is any other person who could also authorise the Keeper to register the tartan (for example someone who shares property rights in the tartan with the applicant), where such a person consents to their name and address appearing on the Register, the applicant must certify to the Keeper that the other person has consented.
15. Subsection (4) sets out what an applicant must do if he does not have a right to authorise the Keeper to register the tartan. This would be the case if he had no intellectual property rights in the tartan or any material accompanying the application. In such a case, an applicant has to be able to certify that there is no other person with the right to authorise registration. To avoid falsely certifying this, the applicant must take reasonable steps to establish whether a person with such a right exists.
16. Subsection (5) requires all applicants (regardless of whether they can authorise the Keeper to register the tartan or not) to provide an indemnity in the event of the Keeper having to pay damages or expenses in consequence of having registered a tartan. This might be the case where registration breached intellectual property rights in the tartan or material accompanying the application held by a third party.
17. Subsection (6) allows the Keeper to specify and amend the form of application.
18. Subsection (7) prescribes the information to be provided in support of an application for registration. This includes a requirement at paragraph (c) for a description of the tartan, including information on colour and on threadcount of the tartan, which is the main component and identifier of a tartan design. Paragraph (d) seeks detail on the applicant's connection or relationship with the name that the design is intended to be registered under. The nature of the association with the name is explained further at subsection (12)(b). This requirement will clarify whether the applicant can establish a proper connection with the name of the tartan, or with any event or organisation with which the name suggests an association. There is also a general provision at paragraph (f) to require from the applicant any other information that the Keeper may specify.
19. Subsection (11) enables an applicant acting on behalf of a group to specify the capacity in which he or she is acting and who the group is, and to authorise the Keeper to record the detail of the group in the Register. This is to help clarify and establish that an application is linked to a particular group, body or organisation which lacks a separate legal personality and thus cannot register under its own name.

*These notes relate to the Scottish Register of Tartans Act 2008
(asp 7) which received Royal Assent on 13 November 2008*

20. An application must be accompanied by a photograph or picture of the tartan and a woven sample of the tartan may be included if desired. Subsection (12)(a) allows for the photograph or pictorial representation to be in electronic form but, however provided, the image has to meet any requirements the Keeper sets out.